



02165.000008

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
	:	Examiner: Dmitry Suhol
AKIO NAKASHIMA, ET AL.)	
	:	Group Art Unit: 3712
Application No.: 09/679,341)	
	:	
Filed: October 4, 2000)	
	:	
For: WATER-METACHROMATIC)	
CLOTH SHEET, TOY SET	:	
USING THE SAME, AND)	
WRITING INSTRUMENT	:	
FOR WATER-METACHROMATIC)	
MEMBERS	:	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. §1.132

Sir:

I, Yutaka Shibahashi, am making this Declaration to evidence the commercial success of the subject matter of the pending claims. My position is General Manager of R&D Department at Pilot Ink Co., Ltd., the Assignee of the above-identified application. This Declaration is based on my own personal knowledge, as well as on information and belief.

Products using the present invention are sold in Japan under the (phonetic) tradename SuiSui Oekaki. Products using the present invention are also sold in the United

States under the tradename Aqua Doodle. In North America, the Aqua Doodle is produced by SpinMaster Ltd. (www.spinmaster.com/products/aquadoodle/aquadoodle.htm).

Description of these products, and their sales, are provided below.

1. One SuiSui Oekaki is a combination of a water-metachromatic mat and a pen for water supply (price 2,980 yen). It was introduced to the market in 2000.
2. Another SuiSui Oekaki is a combination of water-metachromatic mat, a pen for water supply and an accessory for stamping an image (price 3,980 yen). It was introduced in 2001.
3. The Aqua Doodle is also a combination of a water-metachromatic mat, a pen for water supply and an accessory for stamping (manufacturer's suggested price \$19.99). It was introduced in 2003

Sales of these items are as follows:

	2000	2001	2002	2003	2004	Total
Product (2980 yen)	89,187	114,172	77,797	70,230	50,384	401,770
Product (3980 yen)	--	61,355	141,580	81,165	46,641	330,741
Aqua Doodle	--	--	--	31,614	898,555	930,169
Total	89,187	175,527	219,377	185,012	997,584	1,662,680

As noted, for instance, on Amazon.com, the Aqua Doodle is a drawing mat. The description is that "[k]ids will like the novelty of its disappearing colors...using the included marker pens that do not transfer color to other surfaces.... Color from the pens appears when water touches the mat; it then fades out without a trace in 60 seconds or so. That's it: no ink, no paint and no mess."

There are currently unsolicited 69 customer reviews available (http://www.amazon.com/gp/product/customer-reviews/B000008X343/ref=cm_cr_dp_2_1/103-5843646-

4571860?%5Fencoding=UTF8&me=A3UN6WX5RR02AG&s=toys). Reviews are consistently excellent (e.g., "Superb!", "Dries quickly.", "I love this!", "No messes and no stains.", "Easy to Store.", "Awesome.", "Great Concept.", "Absolutely fantastic", etc.) despite that it is, frankly, considered costly and, possibly, even overpriced.

Our internal customer research, surveys and feedback show that these products are purchased because:

- (i) they are foldable,
- (ii) they can be spread out on the floor without becoming soiled,
- (iii) they can be spread out without getting a floor (or table) wet,
- (iv) ink is not required for coloring,
- (v) the device is repeatedly usable; and
- (vi) the device dries sufficiently quickly, typically in less than a minute, so children must constantly draw on it. Because the images are constantly fading, children see it as a challenge and are not bored.

All of these advantages are directly related to the claimed invention. That is to say,

- the product is foldable due its (claimed) cloth construction,
- the product can be spread out without becoming soiled due to its (claimed) water-impermeable backing,
- the product can be utilized without getting a floor or table wet due to its (claimed) water-impermeable backing,
- ink is not required due to its (claimed) water-metachromaticity,
- the device is repeatedly useable due to the (claimed) reversible transparency from water-absorbed and water-unabsorbed states, and

- the quick nature of the drying characteristic is due to the (claimed) amounts of fine-particle silicic acid together with the (claimed) ratio of fine-particle silicic acid/binder resin in the porous layer.

I have been unable to discover any marketed products corresponding to the cited prior art relied upon by the Examiner, e.g., Lee (U.S. Patent No. 5,163,846), Lenkoff (U.S. Patent No. 4,212,393), Wakai (U.S. Patent No. 3,463,597), Green (U.S. Patent No. 5,958,525), etc.

I am surprised by the high level of commercial success evidenced above. The sales do not result from promotion, tying, advertising or market power. In contrast, as discussed above, the sales result directly from advantages inherent in the pending claims.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Yutaka Shibahashi
General Manager of R&D Department

Date: February 21, 2005

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